
Introduced by Senator Walters

February 18, 2011

An act to amend Section 10214 of the Commercial Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 868, as introduced, Walters. Lease contracts: warranties.

Existing law governs the rights and remedies of parties to lease contracts, including specifying the creation, limitation, and negation of various types of warranties on leased goods. Existing law specifies the requirements to negate an implied warranty of merchantability and an implied warranty of fitness.

This bill would make nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10214 of the Commercial Code is
2 amended to read:
3 10214. (a) Words or conduct relevant to the creation of an
4 express warranty and words or conduct tending to negate or limit
5 a warranty—~~must~~ *shall* be construed wherever reasonable as
6 consistent with each other; but, subject to the provisions of Section
7 10202 on parol or extrinsic evidence, negation or limitation is
8 inoperative to the extent that the construction is unreasonable.
9 (b) Subject to subdivision (c), to exclude or modify the implied
10 warranty of merchantability or any part of it the language—~~must~~
11 *shall* mention “merchantability,” be by a writing, and be

1 conspicuous. Subject to subdivision (c), to exclude or modify any
2 implied warranty of fitness, the exclusion ~~must~~ *shall* be by a writing
3 and be conspicuous. Language to exclude all implied warranties
4 of fitness is sufficient if it is in writing, is conspicuous and states,
5 for example, “There is no warranty that the goods will be fit for a
6 particular purpose.”

7 (c) Notwithstanding subdivision (b), but subject to subdivision
8 (d),

9 (1) Unless the circumstances indicate otherwise, all implied
10 warranties are excluded by expressions like “as is,” or “with all
11 faults,” or by other language that in common understanding calls
12 the lessee’s attention to the exclusion of warranties and makes
13 plain that there is no implied warranty, if in writing and
14 conspicuous;

15 (2) If the lessee before entering into the lease contract has
16 examined the goods or the sample or model as fully as desired or
17 has refused to examine the goods, there is no implied warranty
18 with regard to defects that an examination ought in the
19 circumstances to have revealed; and

20 (3) An implied warranty may also be excluded or modified by
21 course of dealing, course of performance, or usage of trade.

22 (d) To exclude or modify a warranty against interference or
23 against infringement (Section 10211) or any part of it, the language
24 must be specific, be by a writing, and be conspicuous, unless the
25 circumstances, including course of performance, course of dealing,
26 or usage of trade, give the lessee reason to know that the goods
27 are being leased subject to a claim or interest of any person.